

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ATANACIO MAOASPAC, DEFENDANT AND APPELLANT.

G.R. No. 3878. November 16, 1907

Ponente: TORRES, J.

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TORRES, J.:

On the morning of April 19, 1906, Atanacio Macaspac, lieutenant of the barrio, made his appearance at the gate of the yard of Apolonia Ico's house, situate in the barrio of San Antonio, town of Lubao, Pampanga, and stated that he intended to enter the house and search it. The landlady objected to such search, in the presence of one Luis and Maria de la Cruz, who were also there on that occasion, and three times repeated her objections, alleging as her reasons therefor the absence of her husband from the house. But in spite of her opposition to such search and that offered, in support thereof by her said companions, the defendant, not being provided with and showing no order of court, insisted upon entering the said dwelling under a threat that he would procure a search warrant; thereupon he entered and proceeded to search the house and inspect some jars and baskets therein contained. The said inmates were not aware of what was being searched for, and the defendant was accompanied at the time by one Pedro Manalandin, Moning Sambat, and Tolome Devera. The facts as above described, and which have been clearly proved in the present cause, constitute the crime of forcible entry of a dwelling committed by the defendant in his official capacity as lieutenant of the barrio, as defined and penalized by article 205, No. 1, of the Penal Code, which provides as follows:

"The following shall incur the penalties of suspension in its minimum and medium degrees and a fine of from 325 to 3,250 pesetas:

"1. The public official who, not being a judicial authority nor empowered in the manner prescribed in article 200, shall enter the domicile of a Spaniard or foreigner without his consent."

Although the defendant pleaded not guilty, it is nevertheless an indisputable fact that he, being the lieutenant of the barrio, at the request of Pedro Manalandin, did enter Apolonia Ico's dwelling and, against the will and in spite of the repeated objections of the said Apolonia and her companions, proceed to search the same for a young goat, which, according to Manalandin, was missing. It does not appear that the search was executed with the consent of the said Luis de la Cruz, one of those who were present in the house as alleged, because the allegation is not confirmed by the said Luis de la Cruz, who, on the contrary, together with the other witness present, Maria de la Cruz, confirms the fact of the abuse committed by the defendant, and also the statements made by the landlady Apolonia Ico.

Atanacio Macaspac, as lieutenant of the barrio, had no authority to make such search, nor was he provided at the time he made the search with a judicial order, hence he abused the power he had in his official capacity as lieutenant of the barrio when, contrary to the wishes of the injured party, he entered her dwelling to execute a search for which he was not clothed with authority, nor provided with the necessary judicial order.

The testimony of the witnesses for the defense did not weaken the certainty of facts as affirmed by the witnesses

for the prosecution, for it is an undeniable fact that the defendant did enter and search the said dwelling in spite of the persistent opposition offered by the inmates thereof, and that the defendant in so doing did not produce, nor did he carry with him, any order or warrant issued by competent authority. The defendant has thereby incurred the penalty provided in article 205 of the Penal Code, and owing to the absence of any mitigating or aggravating circumstance attending the commission of the said crime, the penalty applicable is the medium degree thereof. For the reasons hereinbefore stated we are of the opinion that the judgment rendered below should be reversed and we hereby sentence Atanacio Macaspac to the penalty of one year four months and twenty-one days of suspension from public office, of the right of suffrage, active and passive, of any profession or trade, to pay a fine of 325 pesetas, and in case of insolvency to the corresponding subsidiary imprisonment, and to pay the costs of both instances. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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